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In re Application of :
Steven W. Trovinger et al : DECISION ON PETITION
Application No. 10/699,247 : UNDER 37 CFR 1.78(a)(3)
Filed: October 30, 2003 :
Attorney Docket No. 10991471-10 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 20, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

The instant application was filed on October 30, 2003, and was pending at the time of filing of the instant petition.

The reference to the prior-filed applications was not included in the manner specified in 37 CFR 1.78(a)(2)(i) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2)(ii).

The instant petition does not comply with item (1)

The amendment submitted with the petition reference Application No. 09/831,768 on page one(1) and on page two(2) under Cross-References To Related Applications, the same number is referenced. Also, the PCT application and Application No. 09/162,844 is not mentioned in the amendment submitted with the instant petition. Therefore, the amendment submitted is unclear.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (703) 305-8859.


Karen Creasy
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for Patent Examination Policy